

(2002) 08 GAU CK 0044
In the Gauhati High Court
Case No : Criminal Revision No. 228 of 2002

Sunil Gogoi

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 457
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 61

Citation : (2002) 3 GLR 572 : (2003) 1 GLT 202

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : A.S. Choudhury, N.N. Ahmed and Rahmat Ali, for the Appellant;
None, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. A.S. Choudhury, learned Sr. counsel assisted by Mr. R. All. None appears for the State. The previous orders of this Court reveal that this case was earlier adjourned on various dates on the request of the learned P.P. Assam for production of Case Diary (for short, "C.D."). But no C.D. has been produced. Even today also when the matter is taken up for hearing as fixed item, as ordered by this Court earlier on 13.8.2002, no C.D. has been produced nor has anyone appeared on behalf of the State. During the course of hearing, it appears that the matter is yet to be admitted. Accordingly, Revision is admitted and made returnable forthwith.

2. By this criminal revision, the petitioner has assailed the impugned order dated 17.4.2002 passed by learned Special Judge. Kokrajhar in Special Case No. 5/2002 rejecting the prayer for Zimma of 19,500 Kgs. of C.R. Coils (Building Rods) seized on 27.3.2002 by the Police at Srirampur Gate.

3. The case of the petitioner, in short, is that on 18.3.2002 the petitioner, the proprietor, who is carrying transport business, of Vindhyachal Transport Company situated at Beltola, Basistha Chariali, Guwahati received 19,500 Kgs. of C.R. Coil

from Steel Authority of India Ltd., Guwahati to be delivered at Kanpur. The petitioner transported the said goods through the Truck in question bearing No. UP-30A/4361. During the transit of the said goods by the said vehicle, the Inspector of Excise intercepted the said vehicle at Srirampur Gate in the district of Kokrajhar on suspicion and found 48 numbers of packets of contraband Ganja weighing about 1483.90 Kgs. wrapped with gunny bags. As a result, the vehicle was seized along with the petitioner's C.R. Coil and a case being numbered as Special Case No. 5/2002 was registered u/s 20(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act"). Against such seizure the petitioner approached the learned special Judge, Kokrajhar praying for Zimma of the said C.R. Coil. The learned Special Judge by his order dated 17.4.2002 rejected the prayer for Zimma of the petitioner. Hence this revision petition.

4. Assailing the impugned order as well as praying for Zimma of the seized articles, Mr. A.S. Choudhury, learned counsel has vehemently argued that the petitioner is entitled to interim custody of the property seized during the pendency of the trial under the law inasmuch as the provisions of Sections 451 and 457 Cr.PC permit such custody of seized articles in favour of the rightful owner during the pendency of the trial. Therefore, the view expressed by the learned Judge in rejecting the prayer for Zimma that such seizure of the goods is hit by Section 61 of the Act as the same is being liable for confiscation, is erroneous. To buttress his submission Mr. Choudhury has relied on a catena of decisions of various High Courts and has referred following cases:-

(i) B.S. Rawant v. Shaikh Abdul Karim and Anr., reported in 1989 Cri.LJ 1998 .

(ii) Khema Vs. State of Rajasthan,

(iii) Shradha Nath Vs. Manu Nath,

5. In those above cited cases it was held that though the seized goods are liable to be confiscated u/s 61 of the Act, the same cannot be a ground to deny its interim custody. It was also ruled in those authorities that the Magistrate has the jurisdiction to pass an order for interim custody u/s 451 and 457 Cr.PC as the operation of those provisions are not excluded by the provisions of the Act.

6. In order to appreciate and decide the controversy involved in the case in hand the reference to the provisions of Section 61 of the Act as well as Sections 451 and 457 of the Code of Criminal Procedure is relevant and accordingly the provisions of law laid down in those Sections are extracted hereunder, Section 61 of the Act reads as follows :-

"61.- Confiscation of Goods used for concealing illicit drugs or substances - Any goods used for concealing any narcotic drugs or psychotropic substance which is liable to confiscation under this Act shall also be liable to confiscation."

The provisions of Section 451 and 457 of the Cr.PC run as under :-

"451. - Order for custody and disposal of property pending trial in certain cases - When any property is produced before any criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation ; For the purposes of this section, "property" includes - (a) Property of any kind or document which is produced before the Court or which is in its custody, (b) Any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

"457. - Procedure by police upon seizure of property - Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

7. A conjoint reading of the above mentioned sections goes to show that the Magistrate has the power to pass an order of interim custody to the rightful owner- either under Sections 451 Cr.PC pending trial of the case or under Sections 457 Cr.PC when the property is seized by the police and trial has not yet been started inasmuch as the applicability and operation of those provisions are not excluded by the provisions of the Act. Be it noted that Section 51 of the Act clearly envisages that the provisions of the Code of Criminal Procedure, 1973 shall be applicable insofar as they are not inconsistent with the provision of this Act, to all warrants issued and arrests, searches and seizures made under this Act, Therefore, it is seemingly clear that the provisions enumerated under Sections 451 and 457 Cr.PC relating to the passing of order of proper custody either of the property pending conclusion of trial or of the articles seized by the police, are not inconsistent with Section 61 of the Act, Section 61 of the Act does not debar the Interim custody of the seized articles and the Magistrate has jurisdiction to order for interim custody of seized property subject to a guarantee that the property becomes available for the purpose of confiscation, if any.

8. Section 451 Cr.PC vests power of granting interim custody upon the Magistrate

during the pendency of the trial when Section 457 Cr.PC is general in its application and applies to all cases of seizure of property by any police officer and such seizure is reported to a Magistrate but not produced before him and provides for the procedure to be followed by the Magistrate for the disposal of the seized property, By both the sections the Magistrate has been entrusted with discretionary power but this discretion has to be exercised in a judicial manner and without any arbitrariness or prejudicing the interest of the rightful claimant.

9. In view of what has been discussed and observed above I fully endorse the views expressed in the judicial authorities above referred. The instant case falls within the ambit of Section 457 as the property in question has been seized by the Police and the same has not been produced before the Court and the trial is yet to start. Accordingly, in my considered opinion that the ends of justice would be satisfied if the Zimma of the seized articles, i.e., C.R. Coil is given to the petitioner on condition of furnishing bank guarantee from any nationalised bank to the like amount of the valuation of the seized property and I order accordingly.

10. Consequently, the impugned order dated 17.4.2002 is hereby set aside and quashed.

11. It is made clear that the interim Zimma is granted only to the articles other than the contraband articles to be released for Zimma of the petitioner.

12. For the foregoing reasons and discussions this revision petition succeeds.